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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

SWITCHMEN'S UNION OF NORTH AMERICA, ET AL.,
Petitioners,

v.

NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON AND HARRY H. SCHWARTZ, AND BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR RESPONDENT BROTHERHOOD OF RAILROAD TRAINMEN IN OPPOSITION.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	3
Conclusion	10

CITATIONS

Cases:

Brotherhood of Railroad Trainmen v. *National Mediation Board*, 88 F. (2d) 757	3
Brotherhood of Railway and Steamship Clerks v. *Nashville C. & St. L. Ry. Co.*, 94 F. (2d) 97	7
Order of Railway Conductors v. *National Mediation Board*, 113 F. (2d) 531	4
Brotherhood of Railroad Trainmen v. *National Mediation Board*, No. 8311 (not yet reported) decided February 15, 1943, by U. S. Court of Appeals for the District of Columbia	7

Statute:

Railway Labor Act, as amended in 1934, 48 Stat. 1185, 45 U. S. C., secs. 451, *et seq.*	2

Miscellaneous:

First Annual Report of the National Mediation Board (1935)	7

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OPINIONS BELOW.

The district court rendered no opinion; its findings of fact and conclusions of law are set forth at R. 86-92. The opinions of the Court of Appeals for the District of Columbia are not yet reported but will be found at R. 180-201.

JURISDICTION.

The judgment of the Court of Appeals for the District of Columbia was entered on February 15, 1943, and the petition for certiorari was filed by the petitioners on April 16, 1943. The jurisdiction of this Court is invoked by them

under sections 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. (28 U. S. C. 347.)

QUESTION PRESENTED.

Whether under the Railway Labor Act, in the event of a dispute as to representation, the National Mediation Board can, as a matter of discretion, break down the class or craft of yardmen within a carrier (there being no dispute as to the functions or occupational work of yardmen), into geographical segments or units for the purpose of making separate bargaining units of each segment or unit, after the Board has found, as a matter of discretion, that the carrier consists of all of these segments or units.

STATUTE INVOLVED.

The statute involved is the Railway Labor Act as amended in 1934, 48 Stat. 1185, 45 U. S. C., Sections 151, et seq., the pertinent sections of which are set forth in the appendix to the petition.

STATEMENT OF THE MATTER.

This is covered in the majority opinion of the Court of Appeals and the brief of the Mediation Board and is not here repeated.

There is, however, some inaccuracy in the petitioners' statement of the matter on page 3:

> "2. That there was no evidence that any specific number of yardmen covered by the Switchmen's Union contracts desired any different representation and that, therefore, there was no basis for holding an election."

Mr. Robinson, General Chairman, Brotherhood of Railroad Trainmen testified (R. 139) before the Board that there had been a dispute in January, 1940; that he received a petition addressed to him from 38 yardmen of the former Michigan Central at Toledo, Ohio, out of a roster of 56 men, requesting representation by him because they were denied

the right of having a local committee by the Switchmen's Union. He further testified (R. 140) that 700 employees in train service, yard service and engine service and among the carmen at Detroit had filed a petition to the C.I.O. for representation.

The records of the Mediation Board (R. 41) shows that 479 yardmen on the former Michigan Central and 774 yardmen on the former New York Central—Lines West signed representation authorizations for Brotherhood of Railroad Trainmen representation, both of which lines were covered by Switchmen's contracts, with the exception of nine yards on the New York Central, Lines West.

ARGUMENT.

The petitioners, apparently have abandoned their position that the Board erred in holding that all the segments and divisions of the New York Central Railroad were operated as a single carrier.

The remaining question presented is whether under the Railway Labor Act, in the event of a dispute as to representation, the National Mediation Board can, as a matter of discretion, break down the class or craft of yardmen within a carrier (there being no dispute as to the functions or occupational work of yardmen), into geographical segments or units for the purpose of making separate bargaining units of each segment or unit, after the Board has found, as a matter of discretion, that the carrier consists of all of these segments or units.

It is denied that the decision of the Court of Appeals is in conflict with other decisions of this or any other Court of Appeals. The case of *Brotherhood of Railroad Trainmen v. National Mediation Board*, 88 F. (2d) 757, App. D. C. decided in December, 1936, principally relied upon by the petitioners, as indicating a conflict, did not deal with the question presented here, the issue in that case being whether or not brakemen whom, the evidence showed spent the major portion of their time as road conductors, were eligible to vote as conductors for representation. The quotation of

parts of the court's opinion on page 11 of the petitioner's brief does not sustain the petitioner's position.

The "then current working agreement" referred to by the court obviously refers to the agreement in a functional or occupational sense rather than in a geographical one since the latter question was in no way involved in this case. That the working agreement is not to be all controlling is found in the court's statement "* * * and so we think that by reference to the terms of the working agreement which the employees have made, is to be found at least *some evidence* of who are members of the class or craft covered by the agreement." (Italics Supplied)

In order to determine whether or not employees are involved in a dispute it is first necessary to determine who the employees are, which is very forcefully pointed out in the majority opinion of the Court of Appeals (R. 193):

> "It is doubtlessly arguable that divisional autonomy will afford a larger number of the 6,087 yardmen the representative of their choice. If each yard were voted separately, however, more yet of the yardmen would be accommodated, and if each section of each yard were given a separate representation, still more would have their choice, and so on, until it would be possible to make the units minute enough to give all 6,087 the representative that they wished. However, this is not the purpose or design of the Act. The Act was created to furnish a procedure whereby the employees of a particular craft or class could attain a representation by the organization which the *majority* of that craft or class desired. The larger the number in the class, the more possible dissidents. The larger the class, however, perhaps the more desirable that the employer be able to deal with a single representative, and the more necessary a single contract for effective collective bargaining."

Likewise the case of *O. R. C.* v. *National Mediation Board*, 113 F. (2d) 531, App. D. C. decided in June, 1940, is not authority for the "conflict" claimed by the petitioners because in this case the court was dealing with the question

of whether or not the Board was arbitrary and capricious in determining that yard conductors and yard brakemen or helpers and switchtenders constituted the craft of yardmen, the court holding that the Board was not arbitrary and capricious, in view of the fact that the employees themselves had agreed this group was embraced in the term "yardmen". The term "class" is considered by the court on page 534, as referring to various occupational groups and nowhere does this decision refer to class or craft as co-extensive with geographical subdivisions.

It is stated by the petitioners that in the present case the court upheld a ruling of the board which would destroy existing contractual relations "* * * and prevent an organization which had represented a particular class of yardmen for many years prior to and since the adoption of the Act, from continuing to represent these employees * * *". This contention seems logically answered by the majority opinion of the Court of Appeals (R. 187). "Appellants cannot complain of interference with their contract if the provision is a lawful exercise of Congressional authority. Their contracts were necessarily made subject to that authority. It is an established principle that appellants must be considered to have made their contracts in contemplation of the contingency that they might be invalidated by a proper exercise of legislative power".[1]

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[1] *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241; *Semler* v. *Oregon State Board of Dental Examiners*, 294 U. S. 608, 610; *Sproles* v. *Binford*, 286 U. S. 374, 390; *Union Dry Goods Co.* v. *Georgia Public Service Corp.*, 248 U. S. 372, 375.

In *Franklin* v. *Pennsylvania-Reading Seashore Lines*, 122 N. J. Eq. 205, 193 Atl. 712, 718, rosters of seniority, priority, and the positions of employees were consolidated after the unification of two railroads. The complaining employee representative raised the question that a contract existed between the men and the railroad by which they had protected seniority rights because of employment upon the former separate lines. The court held:

> ". . . . It would seem that such rights as existed respecting the former railroads ceased upon the men becoming employees of the defendant railroad company. . . . ."

The petitioners state (brief, page 13) "no one is authorized under the Act to require the Switchmen's Union to extend its membership over the thousands of miles comprehended in the New York Central System in order that it may be permitted to continue to represent yardmen on those portions of the system where this union has been long organized". The Mediation Board's certification does not cover the New York Central *System* but covers the New York Central *Railroad*. The latter did not include those four roads owned but not operated by the New York Central Railroad. The difference between "railroad" and "system" was pointed out in the Circuit Court of Appeals' opinion (R. 186-187).

Petitioner's brief, page 14, states: "Vice President Walber of the New York Central testified that for the craft of train dispatchers the Boston & Albany, New York Central and Big Four had agreements with the American Train Dispatchers Association. But on the Michigan Central the dispatchers agreement was with the Order of Railway Telegraphers". It thus appears that the first three subdivisions of the New York Central Railroad has *one* representative for the craft of train dispatchers. He stated further (R. 168) "When it becomes necessary to negotiate changes in the New York Central agreements, special arrangements are usually made for the *joint* handling for the New York Central Railroad and Big Four." Mr. Walber further testified (R. 167); that the New York Central Railroad had *one* contract on the entire system affecting dining car stewards[2] and are endeavoring to negotiate a uniform contract covering cooks and waiters.

The wisdom of unifying contracts was also recognized by the Pennsylvania Railroad which has one contract covering *all* yardmen and trainmen for the entire system. This contract had its inception in 1920 and in 1937 both the management and the Board refused to change the arrangement (R. 115).

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[2] In the matter of the Representation of Employees of the New York Central Railroad System (Dining Car Stewards) case, R. 263.

The case of *Brotherhood of Railway & Steamship Clerks v. N. C. & St. L. Ry.*, 94 F. (2d) 97, C. C. A. 6th, decided December, 1937, cited by petitioner, brief page 15, likewise does not show the conflict claimed, nor are the issues in that case parallel to the issues in the present case as claimed. The court, in this situation, was dealing only with the question of whether or not employees who performed labor work are to be included under the craft of clerks. No where did the court deal with the geographical area to be encompassed by the term "class or craft", but these terms were dealt with solely in the occupational or functional sense.

The case of *Brotherhood of Railroad Trainmen v. National Mediation Board*, No. 8311 (not yet reported) decided by the Court of Appeals (D. C.) on February 15, 1943, the same day as the instant case, is not in any degree inconsistent as claimed in that case. The Court stated at page 4: "The Board, we think properly held, indeed the fact is admitted, that there is here no dispute as to who is the representative of any craft or class. It is perfectly clear that such dispute as exists is whether particular work is to be done by employees within one craft or class or another. And the Board's authority to determine who is the representatives of a craft or class does not include authority to define the type of work that each craft or class must do. This, in substance, is what we held in *Brotherhood v. Board*, 66 App. D. C. 375, 88 F. (2d) 757."

The "Misconstruction of the Railway Labor Act", claimed by the petitioners (Brief 16) does not seem apparent but indicates, we believe, instead, a misconstruction on the petitioner's part, of the Railway Labor Act. The Brotherhood of Railroad Trainmen submitted 4749 authorizations to the Mediation Board, together with its invocation. 4112 yardmen of the New York Central Railroad, out of 5260 casting ballots, voted for Brotherhood of Railroad Trainmen representation, 941 voting for the Switchmen's Union of North America. To deny to this over-

whelming majority a representative of their own choosing would plainly be to defeat the purpose of the Railway Labor Act. It is conceivable that, if the New York Central were broken down into minute units, a larger proportion could have a representative of their own choosing but this would be contrary to the understanding of the Act by both those who favored and opposed it.[3]

The majority opinion in the instant case (R. 190), very clearly shows the contrast between the National Labor Relations Act, where the Board is given the express authority for the purpose of collective bargaining, to decide whether: "* * * the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof, * * *".[4]

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[3] Mr. Joseph B. Eastman, author of the 1934 amendments to the Railway Labor Act, explained them to the Congressional Committees and in reply to a question by a member of the Committee he testified on this precise point as follows (House Hearings, p. 57):

> Mr. Huddleston. For illustration let us take the case we will say, of the machinists at a given shop when there are other machinists employed at other shops. Would these machinists at that particular shop be able to get together under this sentence and bargain with their employer?
>
> Commissioner Eastman: Well, my understanding of the way in which the words "craft" or "class" have been defined in the past, is that they would cover the entire service of any particular carrier. That is, it would not be a class of employees, to pick out those that did work in a particular shop, but it would be all of the employees of the carrier, no matter in what shop they were located who did that particular kind of work.
>
> Mr. Huddleston. For that particular employer?
>
> Commissioner Eastman. Yes, for that particular employer.

Hearings before House Committee on Interstate and Foreign Commerce on H. R. 7650, Railway Labor Act Amendments, 73d Cong. 2d Sess., pp. 15-65, and Hearings before the Senate Committee on Interstate Commerce on S. 3266, to amend the Railway Labor Act, 73d Cong. 2d Sess., pp. 9-26, 145-160.

[4] National Labor Relations Act (29 U. S. C. A. Section 159).

Nowhere in the Railway Labor Act is any such authority given and we respectfully submit no such discretion was intended.

The implication of the petitioners' brief is that the present decision of the Board, the District Court and the Court of Appeals is at variance with the past practice and previous decisions of the Board; that the denial of certiorari by this Court would result in a radical departure from the existing practice in holding, when the issue is raised, that crafts or class must be polled on a carrier wide basis. This implication is not a fact. The record will show that in all cases where there was any objection to dividing a carrier into separate bargaining units for one craft by any of the parties interested in a representation dispute, the vote was conducted on a carrier-wide basis. (R. 46-52.) Every single argument that the petitioners attempt to make on page 20 of their brief entitled "Public Importance of the Issues," applies with equal force against the new interpretation asked by them. The petitioners argue on page 20, under heading No. III: "Public Importance of the Issues," inter alia, that the efficiency and safety of railroad transportation depends in considerable measure upon the maintenance of satisfactory and harmonious relations between employer and employee. With this we heartily agree, as well as all propositions cited by them under sub-headings 1, 2, 3 and 4; all of which, it seems to us, is a most potent argument for leaving undisturbed

1. The construction placed upon the 1934 amendments by Joseph B. Eastman, then Federal Coordinator of Transportation, who drew them.
2. The interpretation of the sections in question by both those who favored and opposed them at the various committee hearings.
3. The interpretation of the Board both by its decisions and in its first annual report. (R. 46-47)
4. The affirmance of the Board's position by the District Court and the Court of Appeals for the District of Columbia.

The petitioners have not cited a single case, nor do we know of any, which support the proposition that "craft" or "class" should be given the geographical or territorial interpretation claimed.

The present case becomes important only if the contentions of the petitioners have merit.

CONCLUSION.

The judgment below was clearly right; the majority opinion of the Court of Appeals, in a most detailed, logical and learned opinion, refutes the petitioner's various contentions (as indeed does the minority opinion on many grounds) and therefore, this respondent has not attempted, at this time, to present an adequate argument on the merits. It is respectfully submitted that no useful purpose could be served by granting certiorari to review the opinion of the Court of Appeals for the District of Columbia in this case and the petition should be denied.

Respectfully submitted,

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